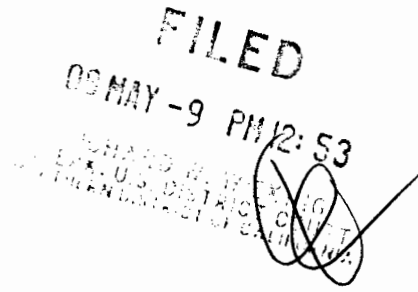


Derreck Sunderland
C-84327 550-2-40U
P.O. Box 9,
Avenal, CA 93204



IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Derreck Sunderland,
Petitioner, Pro Per

Case No. C-07-05345 CRB (PR)

OPPOSITION TO MOTION TO
DISMISS PETITION

v.

James D. Hartley,
Warden, Respondent

Judge: The Honorable
Charles R. Breyer

Petitioner, Derreck Sunderland, opposes Respondent's Motion to dismiss the petition for writ of habeas corpus and denies that he is in lawful custody of the California Department of Corrections and Rehabilitation. The petition is not moot; the petition is not successive; and the petition does concern a clearly established federal question.

1. INTRODUCTION

2.
3. The following discussion will address the Respondent's
4. allegations. First, the petition is not successive because
5. petitioner could not have raised the claim at an earlier time.
6. Second, the petition does raise a federal question concerning
7. petitioner's reasonable understanding of the benefits of his plea
8. bargain. Third, the question raised in this petition is not being
9. resolved in *In re Rutherford*, Super. Ct. Marin County, 2004,
10. SC135399A. Finally, the petition is not moot because petitioner
11. has not received a hearing that *comports with due process*.
12.

13. STATEMENT OF RELEVANT FACTS

14.
15. 1) On October, 26, 1983, petitioner entered a plea bargain. His
16. attorney stated that he had "advised him of the law as it
17. relates to the facts of his case". (Petr. Ex 1, p.3, RT 32-24-
18. 25).
19.
20. 2) Prior to the time for Sentencing, petitioner tried to
21. withdraw his plea. On January 13, 1984, a Motion to Withdraw
22. Plea was heard. The judge who presided over the plea
23. proceedings stating, "I thought Mr. Dressler [petitioner's
24. attorney] worked out a very excellent disposition..." (Ex. I,
25. p.1, RT 4:18-19; Motion to Withdraw Plea). Petitioner swore
26. under oath, "I didn't realize what I was looking at". (Ex. I,
27. p.2, RT 8:4). The Motion to Withdraw Plea was denied.
28.

1. 3) On October, 23, 1991, petitioner appeared before the Board of
2. Prison Terms for his Initial Parole Consideration Hearing.
3. Parole was denied.
4.
5. 4) On July 9, 2003, petitioner appeared before the Board for his
6. sixth parole hearing. His attorney suggested that the panel
7. order a new psychological evaluation. (Ex II, p.1, BPT RT 25:4-
8. 6) . Parole was denied for three years
9. 5) On July 9, 2006, three years after the three-year denial at
10. the sixth parole hearing, the Board did not conduct the
11. seventh hearing.
12.
13. 6) In late August, 2006, petitioner asked about the hearing and
14. was informed that the hearing would be postponed indefinitely.
15. 7) On October 3, 2006, petitioner went to his seventh hearing.
16. Commissioner Harris-Ritter postponed the hearing, claiming the
17. need for an up-to-date psychological evaluation. (Petr. Ex 6) .
18. Petitioner objected to the postponement.
19. 8) On April 9, 2007, 45 months after the July 2003 hearing,
20. petitioner went for an up-to-date psychological evaluation.
21.
22. 9) On May 23, 2007, petitioner appeared before the Board for his
23. seventh hearing. The commissioner read the statement of facts
24. into the record, stating,
25.
26. "The victim threw him [petitioner] against the
27. wall and started getting on top of him". (Ex. III,
28. p.1-2, BPH RT 28:24-25, 29:1) .

1. The commissioner accepted petitioner's testimony

2. "...When he grabbed me...when we started
3. struggling, he had gotten on top of me and he
4. was choking me. That's when I pulled out my
5. knife and I just stabbed him". (Ex. III, p.3,
6. BPH RT 36:17-21).

7. The panel denied parole, stating,

8. "The victim was sat upon by [petitioner] and
9. stabbed..." (Ex. III,p.3, BPH RT 124:13-14).

10.
11. THE PETITION IS NOT SUCCESSIVE

12.
13. In regards to second or successive petitions, the Ninth
14. Circuit Court of Appeals has held:

15.
16. "That a prisoner has previously filed a federal
17. habeas petition does not necessarily render a
18. subsequent petition 'second or successive.'"(Hill v.
19. State of Alaska, 297 F.3d 895, 898; (9th Cir.2002)
20. citing In re Cain, 137 F.3d 234 235, (5th
21. Cir.1998) (Per Curium).

22. "...a prisoner's first petition challenging the
23. calculation of release date should not be deemed
24. successive if the prisoner did not have an
25. opportunity to challenge the state's conduct in a
26. prior petition" (Hill v. State of Alaska,. citing
27. Crouch v. Norris 251 F.3d 720, 725 (8th
28. Cir.2001) (Also see Walker v. Roth, 133 F.3d. 454, 455
 (7th Cir.1997) (Per Curium).

1. "It also bears noting that the Supreme Court has
2. declined to read § 2244 to preclude prisoners from
3. bringing habeas claims that could not have been
4. brought in earlier petitions See *Slack v. McDaniel*,
5. 529 U.S. 473, 120 S. Ct. 1593" (*Hill v. State of*
6. *Alaska* 898)

7. The claim raised in this petition is distinct from the claim
8. raised in *Sunderland v. Mendoza-Powers* 1:06-cv-00999 LJO TAG and
9. could not have been raised at the time of filing *Sunderland v.*
10. *Mendoza-Powers*. *Sunderland v. Mendoza-Powers* involves a challenge
11. to the application of some evidence beyond the minimum elements of
12. the stipulated offense to require petitioner to serve a non-
13. bargained-for "more lengthy period of incarceration". (Cal. Pen.
14. Code § 3041(b)). That claim (hereafter the *some-evidence*
15. *challenge*) requires resolution of an ambiguous term of the
16. agreement (i.e. "the date of his initial parole" (Petr. Ex.1 p.5,
17. RT 33:9)).

19. The *some-evidence challenge* was filed on August 1, 2006, at
20. which time petitioner was still waiting and hoping to attend his
21. seventh hearing. When, in late August, 2006, petitioner
22. realized that the seventh hearing would not be held any time
23. soon, he filed the claim now before this court in the State
24. Superior Court. (hereafter the *timely-hearing violation*).

26. Petitioner could not have raised the *timely-hearing violation*
27. at the time that he raised the *some-evidence challenge* because he
28.

1. was required to first attempt to resolve the issue in the state
2. courts. If he had waited to file the *some-evidence challenge* until
3. after he had exhausted state court remedies on the *timely-hearing*
4. violation, then he would have risked an untimely procedural
5. default on the *some-evidence challenge*.
6.

7. If a plea bargain is induce by various benefits, then the
8. plea bargain can be violated in various ways. "[I]f the expression
9. 'second or successive' were interpreted too liberally, it would
10. 'all but foreclose challenges to the constitutionally of the
11. execution of [] sentences'". (*Hill v. State of Alaska*, 899;
12. quoting *Crouch v. Norris*, 251 F.3d 720, 722.). Likewise, it would
13. allow the state to violate the plea bargain by the manner in which
14. it executes the agreed-upon sentence.
15.

16. Accordingly, since the district court has never addressed the
17. *timely-hearing violation*, and since this issue could not have been
18. raised at an earlier time, the petition is not successive, and
19. petitioner was not "obligated to secure [the court of appeals]
20. permission prior to filing his habeas petition in the district
21. court". (*Hill v State of Alaska*, 899). Therefore, Respondent's
22. Motion to dismiss the habeas petition should be denied.
23.

24. Since petitioner entered his plea bargain in San Francisco
25. County, within the Northern District of California, this court
26. retains jurisdiction over his claim. When, in October 2007,
27. petitioner filed the *timely-hearing violation* in the Northern
28.

1. District of California, the *some-evidence challenge* had been filed
2. in the Eastern District of California for over 14 months without
3. an order for response. As a result, petitioner began questioning
4. whether he had erroneously filed the *some-evidence challenge* in
5. the Eastern District. Since then, a response has been ordered on
6. the *some-evidence challenge*, but the claim has not yet been
7. adjudicated on the merits.
8.

9.
10. THE PETITION RAISES A FEDERAL QUESTION

11. The question is not whether the State is violating state law.
12. That is not in dispute. The question is: Does the State's failure
13. to follow state law in the execution of an agreed-upon sentence
14. violate the agreement? This is a federal question. *Santobello v.*
15. *New York*, 404 U.S. 257 (1971)?
16.

17. Suppose a hypothetical defendant is offered a plea bargain
18. whereby the State agrees to a sentence of 16 years to life. The
19. defendant's attorney researches the law and learns that the
20. release date *shall normally* be set at the Initial Parole
21. Consideration Hearing, and in those abnormal cases when the
22. release date is not *normally* set, *timely* subsequent hearings shall
23. be held according to the law. The attorney concludes from his
24. research that as a result of the plea bargain, the hearings will
25. be held sooner rather than later. Thus, the State's offer seems to
26. be a *very excellent* disposition. He then advises his client,
27.
28.

1. saying, "The offer is a good deal". Upon this advice, the
2. defendant accepts the State's offer and is sentenced to 16 years
3. to life in accordance with the agreement. However, during the
4. execution of his sentence, the State does not proceed according to
5. the law, thus, depriving the defendant of the "good deal".
6.

7. Is such a defendant not entitled to federal relief under
8. *Santobello v. New York*? On the one hand, the State only agreed to
9. the sentence. The State never promised to follow state law in the
10. execution of that sentence. On the other hand, since the State did
11. not proceed according to the law, then, contrary to the
12. defendant's reasonable understanding, the plea bargain was not
13. such a "good deal".
14.

15. Petitioner entered the plea bargain upon the advice of his
16. counsel. But would counsel have advised Petitioner to enter the
17. plea bargain if he had known that the State would not follow state
18. law in the execution of the agreed-upon sentence?
19.

20. Prior to Sentencing, petitioner tried to withdraw his plea,
21. asserting, "I didn't realize what I was looking at". (Ex. I, p.2
22. RT 8:4). The judge denied the Motion to Withdraw Plea because he
23. thought that the disposition was "very excellent". (Ex. I, p.1, RT
24. 4:19). But would the judge have denied the Motion to Withdraw Plea
25. if he had known that the State would not follow state law in the
26. execution of the agreed-upon sentence?
27.
28.

1. If the State is allowed to violate state law in the execution
2. of an agreed-upon sentence, then such violation undercuts the
3. basis for the agreement and renders the benefits illusory, thus
4. violating due process. (U.S. v. Franco-Lopez, 312 F.3d 984, 991;
5. (9th Cir.2002), citing U.S. v. Dillon, 307 F.2d 445. (9th
6. Cir.1962). This is a federal question. The question is: Does the
7. State's failure to follow state law in the execution of an agreed-
8. upon sentence violate the agreement? That is the question the
9. Respondent did not answer.
10.

11.
12. IN RE RUTHERFORD IS NOT RESOLVING THE ISSUE PRESENTED IN THIS
13. PETITION

14. In re Rutherford, SC135399A, is a habeas corpus petition that
15. was filed in the Marin County Superior Court in 2004 where it is
16. still pending. It is an attempt to compel the Board to proceed in
17. accordance with state law. Whether or not the Rutherford Case is
18. successful in achieving its goal is not the issue in this habeas
19. corpus. So, assuming that the Rutherford case does eventually
20. succeed in compelling the Board to proceed in accordance with
21. state law, then petitioner will eventually receive a fair hearing,
22. but it will be later rather than sooner.
23.

24.
25. THE CLAIM IS NOT MOOT

26. The Respondent asserts that because petitioner received a
27. hearing on May 23, 2007, the claim is moot. (Ans. P.4, lines 14-
28.

1. 16). However, the assertion begs several questions. How can an
2. untimely hearing take the place of a timely hearing? More
3. importantly, was the May 2007 hearing a fair hearing?
4.

5. Can claim become unmoot?

6. The May 2007 hearing (the seventh hearing) is being
7. challenged in the state court as arbitrary because the reasons for
8. the denial have no evidentiary basis in fact. For example, during
9. the hearing but before the decision, the commissioner read the
10. Statement of Facts into the record. The commissioner acknowledged
11. that;
12.

13. The victim threw him [petitioner] against the wall
14. and started getting on top of him. (Ex. III, p.12,
15. BPH RT 28:24-25, 29:1).
16.

17. The commissioner accepted petitioner's testimony;

18. "...When he grabbed me...when we started struggling,
19. he had gotten on top; of me and he was choking me.
20. That's when I pulled out my knife and I just
21. stabbed him". (Ex. III, p.3, BPH RT 36:17-21).
22.

23. The panel denied parole, stating,
24.

25. "The victim was sat upon by [petitioner] and
26. stabbed..." (Ex. III, p.3, BPH RT 124:13-14).
27.

28. The accepted Statement of Facts has always indicated that the
victim was on top of petitioner when the stabbing began. That is

1. until the May 2007 decision to deny parole when the panel stated,
2. "The victim was sat upon by [petitioner] and stabbed..."

3. The difference between the victim being on top of petitioner
4. and petitioner being on top of the victim when the stabbing began
5. is significant in that the latter scenario indicates a greater
6. degree of malicious intent by suggesting that petitioner had
7. overpowered the victim before he stabbed him. That is not true.
8. Therefore, the May 2007 decision to deny parole is based at least
9. in part on a false premise and should be reversed on this ground
10. alone.¹

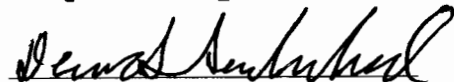
11. The Respondent claims that petitioner "has received the only
12. effective relief that he can be granted-a new parole hearing that
13. comports with due process" (Ans. P.4, lines 16-17). But what if
14. the May 2007 hearing is reversed for violating due process? Is
15. petitioner then only entitled to another, even *more untimely*
16. hearing by the same administrative agency (The Board) that has
17. "operated under a sub rose policy that all murderers be found
18. unsuitable for parole? (Coleman v. BPT cv-96-0783 LKK PAN P.
19. (Petrn. Ex. 8, p.3, lines 1-4; Also see In re Criscione No. 71614,
20. Petrn. Ex. 9). And what if all future subsequent hearings are
21. eventually vacated, one by one, for violating due process? When
22. will petitioner receive the "very excellent disposition" (Ex. I
23.
24.
25.
26.

27. ¹ Petitioner is challenging the May 2007 denial as arbitrary for
28. other, more general reasons.

1. RT 4:19) that he bargained for? When will petitioner at least
2. receive a hearing by a panel that recognizes that the various
3. Penal Code Sections were designed to function in harmony with one
4. another, and that unless release dates are normally set (Cal. Pen.
5. Code § 3041(a)), the backlog of subsequent hearings will continue
6. to grow, depriving parole applicants such as petitioner of the
7. reasonable understanding that the agreed-upon sentences will be
8. executed according to the "law as it relates to the facts of [the]
9. case"? (Petn. Ex 1, p.3, RT 32-24-25). And why should petitioner
10. not be allowed to revive his *timely* Motion to Withdraw Plea? These
11. are some of the questions that the Respondent should be required
12. to answer.
13.
14.

15. For all the aforementioned reasons, the Motion to Dismiss the
16. Petition for Writ of Habeas Corpus should be denied.
17. Petitioner swears under the Penalty of perjury that the facts in this document
18. are true as he believes them to be.
19.

20. Respectfully submitted,

21. 

22. Derreck Sunderland,
23. Petitioner Pro Per
24.
25.
26.
27.
28.

Dated: 5-6-08

Derreck Sunderland
C-84327 550-2-40U
P.O. Box 9
Avenal, CA 93204

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Derreck Sunderland,
Petitioner Pro per

v.

James D. Hartley,
Warden, Respondent

Case No. C-07-05345 CRB PR

Traverse to Respondent's
Answer to petition

Judge: The Honorable
Charles R. Breyer

Petitioner submits this traverse and reasserts all of the allegations contained in the original petition for writ of habeas corpus.

Petitioner denies that he is in lawful custody of the California Department of Corrections and Rehabilitation. Petitioner denies that the petition is moot, a successive petition or that the petition does not involve questions of federal law.

Petitioner alleged that the Board's failure to conduct a timely subsequent hearing was the result of a backlog of overdue hearings which is the result of an illegal policy to normally deny parole. (Petn. p. 12, lines 19-28; p. 13, lines 22-26). The Respondent did not contest these allegations.

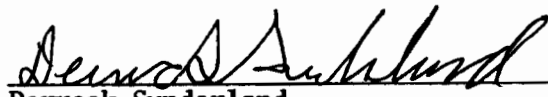
Petitioner submitted *Coleman v. BPT Civ-S-96-0783 LKK PAN P.* (Ex 8) and *In re Criscione*, Santa Clara Superior Court, No. 71614 (Ex 9). Petitioner claimed the information in these cases provides evidence that the Board's policy created the backlog of overdue hearings which is now depriving petitioner of a timely hearing. Petitioner further contends that the uncontested information in these two cases provides clear and convincing evidence that petitioner was telling the truth in 1984 when he swore under oath, "I didn't realize what I was looking at." (Ex. I p. 2, RT 8:4).

Petitioner ~~asserted~~ and reasserts that the law sets forth the terms of the plea agreement, (Petn. p. 14, lines 21-28; p. 15, lines 1-2). Petitioner asserted and reasserts that the law was violated during the execution of his sentence. The Respondent did not deny these allegations.

In conclusion, if the law sets forth the terms of the agreement, and the law has been violated, then the plea agreement has been violated.

For the foregoing reasons, petitioner respectfully requests that this Court grant the writ or order the Respondent to answer the questions raised in the petition and this traverse.

Respectfully submitted,


Derreck Sunderland,
petitioner Pro Per

Dated: 5-6-08

TABLE OF EXHIBITS

Exhibit I--Excerpts from the MOtion to Withdraw Plea, January 13, 1984

Exhibit II--Excerpts from the Sixth hearing, July 9, 2003

Exhibit III--Excerpts from the seventh hearing, May 23, 2007.

Petn. Ex 1, Plea agreement, October 26, 1983;

Petn. Ex 8 Coleman v. BPT CV-96-0783 (2005)

Petn. 9 In re Criscione, Santa Clara Superior Court, No. 71614 (2007)

EXHIBIT

I

EXHIBIT V

4

1 acceptance of your plea at this time is not binding on the Court.
2 If the Court withdraws its approval at the time of sentencing
3 you will be allowed to take back your guilty plea and enter a
4 plea of not guilty if you wish to do so."

5 It was never accepted. That is the day of acceptance, four
6 weeks from that date, and it was not accepted. That's the way
7 the formation of the contract is made. There is no acceptance.

8 MR. SWEETERS: We submit the matter.

9 THE COURT: You are straining it, Mr. Manzella, you are
10 straining it.

11 MR. MANZELLA: The only thing, your Honor, is that is what
12 Santabella said -- It is a contract -- and when you look at the
13 section itself it says that it should be construed liberally.
14 That means if the defendant wants to get off and have it
15 unaccepted he should be allowed to restore it under Dallas to
16 the previous charges.

17 THE COURT: I heard the preliminary hearing evidence in this
18 case and it was very strong, and personally I thought Mr. Dressler
19 worked out a very excellent disposition of this matter on behalf
20 of Mr. Sunderland. He could well end up with a more serious
21 charge being proved against him if it went to trial. I see no
22 reason to set aside this plea.

23 You have presented no evidence other than your allegation
24 here that the matter wasn't accepted by Judge Campilongo, and
25 I cannot buy that argument.

26 The motion to withdraw the plea --

27 MR. MANZELLA: Okay. If your Honor is not ready to accept it,
28 the other thing is the defendant has some reasoning why there was

EXHIBIT VIII

1 THE COURT: That's sustained.

2 MR. MANZELLA: Q And did you know what was being done to you
3 at the end of the preliminary hearing?

4 A No. I didn't realize what I was looking at. He set me off.

5 MR. MANZELLA: I don't have anything further.

6 CROSS-EXAMINATION

7 BY MR. SWEETERS:

8 Q Mr. Sunderland, do you remember that your preliminary hearing
9 was scheduled for October 26; is that correct?

10 A Yes.

11 Q And you were sitting in court, were you not, when evidence was
12 presented at that preliminary hearing; is that right?

13 A Yes, but --

14 Q Is that right?

A Yes.

15 Q And when the Coroner testified you knew it was the Coroner,
16 didn't you?

17 it was.

A I didn't know who

18 MR. MANZELLA: I don't see what the relevancy of this is,
19 what went down at the preliminary hearing. The question is
20 whether or not it was an intelligent waiver and understanding.

21 THE COURT: I think that's what he is leading to. He is
22 laying a foundation. Your objection is overruled.

23 MR. SWEETERS: Q Mr. Sunderland, was the preliminary hearing
24 conducted in the morning or the afternoon?

25 A I think it was in the morning.

26 Q And you weren't under the influence of any alcohol at that
27 time, were you?

A No.

28 Q You hadn't been taking any medication, had you?

EXHIBIT

II

25

1 did note the psych report is four years old.

2 **DEPUTY COMMISSIONER BACHLOR:** Yes, it
3 is.

4 **ATTORNEY CHRISTENSEN:** So I do hope that
5 you will, at the conclusion, request a more
6 recent, updated report --

7 **DEPUTY COMMISSIONER BACHLOR:** Okay.

8 **ATTORNEY CHRISTENSEN:** -- completed on
9 this inmate.

10 **DEPUTY COMMISSIONER BACHLOR:** All right,
11 that's fair. All right, let's go to your
12 parole plans. According to your Board report,
13 if parole is granted, you wanted to self-parole
14 to Las Vegas where your brother, Larry
15 Sunderland, resides?

16 **INMATE SUNDERLAND:** Well, I understand
17 that that's going to be difficult to do that,
18 you know, immediately. I've been -- we're
19 trying to work on an interstate transfer to
20 Nevada where I'll be in a Nevada prison. That
21 hasn't -- I haven't gone very far on that. My
22 counselors won't help me out with that. If I
23 parole to San Francisco, I wrote Delancey
24 Street and I got a letter back and I gave it to
25 my counselor, Ms. Orozco. I don't know if it's
26 there. I haven't gotten a letter back. In
27 this pamphlet, it really talks about the

EXHIBIT

III

1 misdemeanor charges on 6/4/83. The
2 murder investigation that was being
3 conducted by the San Francisco Police
4 Department was focused on him. SFPD
5 inspectors went to the county jail, and
6 the defendant voluntarily acknowledged
7 that he stabbed the victim. After being
8 read his Miranda rights, Mr. Sunderland
9 said he met with the victim and the
10 victim asked him if he had a place to
11 stay. They rented a motel room. At this
12 point the -- at this point the victim
13 wanted the defendant to engage in
14 homosexual acts. The defendant said he
15 became nervous. Both men went downstairs
16 to a store, where the victim bought the
17 defendant a sandwich and a beer, and they
18 returned to the room and went to bed.
19 The defendant and the -- said that the --
20 when he thought that the victim was
21 asleep, he tried to get the victim's
22 wallet. The victim got up and started
23 grabbing the defendant, and pulled him
24 back into the bed. The victim threw up
25 -- threw him against the wall and started

1 getting on top of him. The defendant
2 said that he stabbed the victim with a
3 pocketknife that he carries. Defendant
4 admitted to the police that the shirt
5 found in the -- at the scene belonged to
6 him, described the inside of the room to
7 the satisfaction of the homicide
8 inspectors, and said that he had been
9 taking LSD the day of the -- the stabbing
10 took place."

11 Okay. So that -- now what -- what differences do you
12 have with regard to this -- I assume that part of it has
13 to do with the number of stab wounds, is that --

14 **INMATE SUNDERLAND:** Yes.

15 **PRESIDING COMMISSIONER PRIZMICH:** Okay.

16 **INMATE SUNDERLAND:** There are some more things.

17 **PRESIDING COMMISSIONER PRIZMICH:** Okay. Could
18 you -- could you talk about that a little bit, sir?

19 **INMATE SUNDERLAND:** Okay. Well, they said that
20 it -- that the crime was committed in an especially
21 cruel and callous manner. Seems to me that implies that
22 I'm trying to torture him. I really wasn't trying to --
23 to torture him. I panicked and he -- we -- we struggled
24 for the knife.

25 **PRESIDING COMMISSIONER PRIZMICH:** Uh-huh.

1 left common artery. "There were a total of 25 stab
2 and/or slash wounds to the victim's body. The defendant
3 was arrested on numerous misdemeanor charges on 6/4/83.
4 The murder investigation was being conducted by the San
5 Francisco Police Department, and it was focused on him.
6 San Francisco Police Inspectors went to the county jail,
7 and the defendant voluntarily acknowledged that he
8 stabbed the victim. After being read his Miranda
9 rights, Mr. Sutherland [sic] stated that he met the
10 victim. The victim asked him if he had a place to stay.
11 They then went upstairs to a motel room, and an argument
12 ensued after Mr. Sutherland -- Sunderland attempted to
13 remove money from the victim, and the victim was sat
14 upon by Mr. Sunderland and stabbed with an approximately
15 three or four inch pocket knife a number of times." We
16 note that there have been -- the prisoner has been
17 involved in previous crimes, in that he served time in
18 Texas for manslaughter of very similar circumstances
19 wherein the victim was stabbed to death there. At the
20 time of this crime the -- Mr. Sunderland was -- had
21 skipped parole and was essentially on the run, living on
22 the streets. So we find that he has a record of
23 assaultive or violent behavior in the past. He has a
24 continuing pattern of violence. He has a history of

PROOF OF SERVICE BY MAIL

I THE UNDERSIGNED, CERTIFY THAT I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE, THAT I
CAUSED TO BE SERVED A COPY OF THE FOLLOWING DOCUMENT:

ENTITLED: Traverse to Answer and Opposition to Motion to Dismiss petition
for Writ of Habeas Corpus

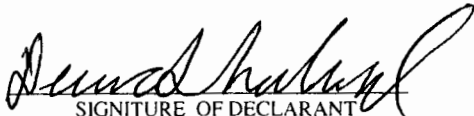
BY PLACING THE SAME IN AN ENVELOPE, SEALING IT BEFORE A CORRECTIONAL OFFICER,
AND DEPOSITING IT IN THE | UNITED STATES MAIL | AT AVENAL STATE PRISON AND ADDRESSED IT
TO THE FOLLOWING:

OFFICE OF THE CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102

Deputy Attorney General
Amanda J. Murray
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

EXECUTED ON May, 6, 2008 AT AVENAL STATE PRISON, AVENAL CALIFORNIA

I, Derreck Sunderland DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAW
OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.


SIGNATURE OF DECLARANT

Derreck Sunderland
PRINT NAME OF DECLARANT

PRO PER.

Derreck Sunderland
C-84327 550-2-406
P.O. Box 9
Aval, CA 93204

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Office of the Clerk
U.S. District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

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